

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition No.: 06-021-15-1-5-00341-15
Petitioner: Scott Bernhardt
Respondent: Boone County Assessor
Parcel No.: 021-18963-85
Assessment Year: 2015

The Indiana Board of Tax Review (“Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. Petitioner initiated this appeal with the Boone County Property Tax Assessment Board of Appeals (“PTABOA”) on August 28, 2015. On November 18, 2015, the PTABOA issued its Notification of Final Assessment Determination. Petitioner then timely filed a Form 131 petition on December 31, 2015, with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. On March 15, 2017, the Board’s administrative law judge (“ALJ”), Dalene McMillen, held a hearing. Neither the Board nor the ALJ inspected the property.
4. The following people testified under oath:
 - Scott Bernhardt, property owner,
 - Lisa Garoffolo, Boone County Assessor.

Facts

5. The property under appeal is a single-family residence located at 7725 Eagle Point Circle in Zionsville.
6. The PTABOA determined the following values:

Land: \$64,800 Improvements: \$218,300 Total: \$283,100
7. Petitioner requested the following values:

Land: \$64,800 Improvements: \$205,036 Total: \$269,836

Record

8. The official record for this matter is made up of the following:

a. A digital recording of the hearing,

b. Exhibits:

Petitioner Exhibit A: Beazer Homes – Eagles Nest – Platinum Series homes,
Petitioner Exhibit B: Beazer Homes – photographs of Juniper homes,
Petitioner Exhibit C: Subject property’s pricing addendum,
Petitioner Exhibit D: Subject property’s sales disclosure form,
Petitioner Exhibit E: Subject property’s settlement statement,

Respondent Exhibit 1: Boone County appeal worksheet,
Respondent Exhibit 2: Photograph of subject property,
Respondent Exhibit 3: 2015 subject property record card (“PRC”),
Respondent Exhibit 4: Assessor’s comparative market analysis,
Respondent Exhibit 5: Notice of Preliminary Hearing on Appeal,
Respondent Exhibit 6: Joint Report by Taxpayer/Assessor to the PTABOA of
Preliminary Informal Meeting – Form 134,
Respondent Exhibit 7: Notice of Hearing on Petition – Real Property – Form
114,
Respondent Exhibit 8: Notification of Final Assessment Determination – Form
115,
Respondent Exhibit 9: Petition for Review of Assessment – Form 131,
Respondent Exhibit 10: Board’s Notice of Hearing on Petition,
Respondent Exhibit 11: Assessor’s summary of written testimony,

Board Exhibit A: Form 131 petition,
Board Exhibit B: Hearing notice,
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that his property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*,

694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.

10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. For 2015, the parties agreed that Petitioner added a new home to the property. The PTABOA determined a 2015 value of \$283,100. Under Ind. Code § 6-1.1-15-17.2(c), the addition of a new home constitutes a change in improvements. Petitioner, therefore, has the burden of proof in this matter.

Summary of the Parties’ Contentions

14. Petitioner’s case:
 - a. Petitioner argued the property is overvalued based on its construction cost. Petitioner contends that they built the “Juniper” floor plan offered by Beazer Homes. The final cost to construct the home after upgrades was \$269,836. To support the construction cost, Petitioner submitted a sales disclosure form and a settlement statement. *Bernhardt testimony; Pet’r Ex. A-E.*
 - b. Petitioner testified that an appraisal report was also completed as part of the overall transaction with regard to the property.¹ The appraisal report valued the property at \$290,000. Petitioner contends the appraisal amount is irrelevant

¹ Petitioner did not in fact submit an appraisal report as part of his evidence. Consequently, the Board will not take any reference to such a report under consideration.

because it is an estimate of value and not the actual price to construct the home.
Bernhardt testimony.

15. Respondent's case:

- a. Respondent offered a comparative market analysis. She used sales of 32 homes from the subject property's neighborhood. The properties sold between January 31, 2014, and January 9, 2015. The sale prices ranged from \$81 per square foot to \$126 per square foot, with an average of \$107 per square foot. That translates to a value of approximately \$308,200 for the subject property. Thus, Respondent concludes, the subject property was not over-assessed for 2015. *Garoffolo testimony; Resp't Ex. 4.*
- b. In analyzing the sales, Respondent claims that only two of the properties sold for less than the subject property's assessed value per square foot. Specifically, 6105 Mountain Hawk Drive sold on January 9, 2015, for \$343,000, or \$81 per square foot. This property is six years older than the subject property, it has five bedrooms, 3.5 bathrooms, a fireplace, a wood deck, 900 square feet of finished basement, and has a C+2 grade. *Garoffolo testimony; Resp't Ex. 4 & 11.*
- c. The other property, 7788 Blue Jay Way, sold on August 27, 2014, for \$270,000, or \$88 per square foot. This property is seven years older than the subject property, has four bedrooms, 2.5 bathrooms, a fireplace, a partial unfinished basement, a partial crawl space, and has a C+2 grade. *Garoffolo testimony; Resp't Ex. 4 & 11.*
- d. Respondent also noted that Petitioner's appraisal of \$290,000 is higher than the current assessed value of \$283,100. Respondent testified that she believes the Petitioner got a "good deal" on the home which further demonstrates that the 2015 assessed value is not excessive. *Garoffolo testimony.*

Analysis

16. Petitioner established a prima facie case that the assessed value was incorrect. The Board reached this decision for the following reasons:

- a. Indiana assesses real property based on its true tax value, which does not mean fair market value, but rather the value determined under the Department of Local Government Finance's ("DLGF") rules. The DLGF's 2011 Real Property Assessment Manual defines true tax value as "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). Evidence in a tax appeal should be consistent with that standard. For example, a market value-in-use appraisal prepared according to USPAP often will be probative. *See id.; see also,*

Kooshtard Property VI, LLC v. White River Township Assessor, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). A party may also offer actual construction costs, sale or assessment information for the property under appeal or comparable properties, and any other information compiled according to generally recognized appraisal practices. *See Eckerling v. Wayne Township Assessor*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also* Ind. Code § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. Regardless of the type of evidence offered, a party must explain how that evidence relates to the property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
- c. Petitioner presented evidence of construction costs, a settlement statement, and a sales disclosure form showing that he purchased the property for approximately \$269,800 on September 26, 2014. The purchase price of a property is often the best evidence of a property's value. *Hubler Realty Co. v. Hendricks County Assessor*, 938 N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, the purchase price was determined approximately five months prior to the valuation date, and the Board finds that this evidence was timely and probative with regard to the market value-in-use for 2015. Therefore, Petitioner has established a prima facie case that the 2015 assessment should be reduced to \$269,800.
- d. Once a petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). To rebut or impeach a petitioner's case, the respondent has the same burden to present probative evidence that the petitioner faced to raise its prima facie case. *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005).
- e. Respondent sought to impeach Petitioner's purchase price by offering a comparative market analysis of properties in the neighborhood. She based her analysis on an average price per square foot. She did not attempt to account for any relevant differences among the properties. Consequently, her analysis has little or no probative value. As the Indiana Tax Court stated in *Fidelity Federal Savings & Loan v. Jennings County Assessor*, 836 N.E.2d 1075, 1082 (Ind. Tax Ct. 2005), "the Court has frequently reminded taxpayers that statements that another property 'is similar' or 'is comparable' are nothing more than conclusions and conclusory statements do not constitute probative evidence. Rather, when challenging an assessment on the basis that the comparable property has been treated differently, the taxpayer must provide specific reasons as to why it

believes the property is comparable. *These standards are no less applicable to assessing officials.*” 836 N.E.2d at 1082 (citations omitted and emphasis added).

- f. Consequently, Respondent’s analysis falls short of what is required for comparative sales data to carry probative weight. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (holding that taxpayers’ comparative sales data lacked probative value where they failed to compare relevant characteristics or explain how relevant differences affected value). Furthermore, she did not use the average sale price from her analysis to attempt to establish the subject property’s market value-in-use.
- g. The Board finds the purchase price is sufficient to make a prima facie case for changing the assessment to \$269,800.

Conclusion

- 17. Petitioner made a prima facie case for a reduction in the assessed value. Respondent failed to rebut Petitioner’s case. Thus, the Board orders that the 2015 assessment must be changed.

Final Determination

In accordance with the above findings of fact and conclusions of law, the Board determines the 2015 assessed value must be changed to \$269,800.

ISSUED: May 2, 2017

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.